FROM THE DESK OF

Paul V. Engle

To the Secretary:

Engle Broadcasting filed comments on JUne 21, 1993. We have been informed the comments did not reach the proper person. Please accept this copy of comments previously filed. Thank you.

Paul V. Engle

DOCKET FILE COPY ORIGINAL

Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JUL 2 0 1993

FCC MAIL ROOM

In the Matter of	)	
	)	
Reconsideration of	)	
Implementation of Sections of	)	MM Docket 92-266
the Cable Television Consumer	)	
Protection and Competition Act	)	
of 1992	)	
Rate Regulation		

POSTED

the business community will not support our station and consequently our local newscasts. The need for our station here in Southern New Jersey is particularly important because of the lack of coverage by and lack of importance to the Philadelphia television stations.

Since we went on the air we have found it increasingly more difficult to reach the people we are licensed to serve. Our signal reaches six Southern New Jersey counties with a population of over a million and a half people (598,700 TV households). Cable TV penetration is 80%. There are four major Cable TV companies that serve Southern New Jersey with 480,000 subscribers. Garden State Cable and Storer Cable both owned by Comcast/Lenfest, control 61% of the Cable television market in Southern New Jersey.

We have tried in vain to gain cable carriage throughout our service area. Cable operators view us as unwelcome competition for advertising dollars. We have tried several incentive initiatives with cable operators with no success. We have tried leasing a channel under the Rules for Leased Channel Access. We requested a reasonable rate (according to the Rules) and all operators responded with rates so high the number one station in the market could not afford to pay. Also the rates for systems owned and operated by the same company bore no relationship to system size nor economic viability. In fact, one local manager told me the rates were set so high so that no one would be able to afford to lease a channel.

Carriage on local cable systems is vitally important to any television station. In many cases today, cable is the only conduit into the viewer's home. Many or most cable subscribers either do not replace old antennas or actually remove their antennas when they subscribe to cable. In fact, one cable operator is encouraging subscribers to remove their antennas with a monetary incentive. Comcast Cable based in Philadelphia, PA engaged in an aggressive media campaign to entice new subscribers to sell their outdoor or indoor antennas for $50.00. New subscribers were encouraged to turn in the rabbit ear type antenna that came with their television set. Those cable subscribers are now unable to receive off-air television signals without incurring the additional expense of purchasing a new antenna. Congress determined that A/B switches were impractical.

Every cable company in Southern New Jersey, except Sammons Communications, has effectively refused to carry or lease a channel to W08CC. Out of desperation, and fear of my station going black, I negotiated a carriage deal with Sammons Communications for one of their smaller systems here. That deal gives Sammons $0.05 per subscriber per month and 5% of our gross revenue. The system has 28,000 subscribers. We agreed to this deal under duress, it was the only way to get <u>some</u> cable carriage, without it we would not be able to operate. If this same deal were struck with the remaining cable companies, it would be impossible for this station to exist. If this high outlay continues long term, this too will jeopardize the life of my station.

Shortly after going on the air in January 1989, I requested carriage for my station on most of the cable systems in South Jersey. Garden State Cable, based in Cherry Hill, NJ, (then NYT Cable) said they did not have channel capacity to accommodate us. They have subsequently added 15 new channels, all cable services. Jones Intercable said our programming was much like what they already had on their system and would not be interested in carrying W08CC. Storer Cable of Woodbury also said they did not have room, and since have also added more channels; more cable services. The balance of the other cable systems in Southern New Jersey also cited no channel capacity, yet have all since added more cable services.

After an arduous year of lobbying cable companies for carriage, and motivating thousands of South Jersey residents to contact their cable companies and ask for W08CC, we realized the futility of asking for carriage. We saw then, and we still believe now, that

year. ($0.83 per sub per month) Jones has 27,000 subscribers

3. On March 8, 1990, I sent a letter to Storer Cable for their Woodbury, NJ and Willingboro, NJ systems requesting Commercial Lease and rates per Sec. 612. Both systems are owned by Comcast. On March 30, 1990, Comcast quoted me a rate for Storer in Woodbury of **$250.00 per hour or $2,190,000.00 per year.** ($6.52 per sub per month) The Woodbury system has 28,000 subscribers. Comcast also quoted me a rate for Willingboro of **$200.00 per hour or $1,752,000.00 per year.** ($5.03 per sub per month) The Willingboro system has 29,000 subscribers.

Each system quoted me rates that were interchangeable for both Public Access and Commercial Lease Use. In fact they made no distinction between the two user types. The rates quoted were hourly rates the same as if the local minister were leasing time on the Public Access Channel. The systems made no provisions for long term Commercial Lease Use.

As you can see, within the Comcast owned systems, there is no uniformity in the rates, other than to quote a rate so high that neither I nor any other station could afford it. In fact, the manager of Storer Woodbury, Kevin Smith, in a telephone conversation after I asked him why is the rate so high, he said "because we know that no TV station including yours could ever afford to pay that amount." These rates were simply designed to exclude television stations from Leased Commercial Access because of competition. Jones Intercable seems to have a policy regarding carriage of television stations that in one case on or about December 10, 1992, a Federal Court in Los Angeles found Jones Intercable guilty of anti competitive behavior. Jones (as with my case here in New Jersey) argued that KHIZ-TV Barstow's programming was redundant of other stations on their system. The court disagreed and ordered Jones Intercable to pay KHIZ-TV $3 million plus legal fees. KHIZ-TV proved that Jones was trying to monopolize the advertising market. KHIZ-TV had tried to negotiate for three years to gain carriage on the Jones system. Within the three years Jones added 28 new channels to their system.

The rates quoted by the cable systems are so high, they greatly exceed the potential income the station can generate from access to the subscribers on each of the systems. According to our calculations, based on current prices charged for advertising in this area, if W08CC were to lease a channel at the rates quoted:

Storer Woodbury rate exceeds potential income by	1200%
Storer Willingboro rate exceeds potential income by	885%
Jones Intercable rate exceeds potential income by	280%
Garden State Cable rate exceeds potential income by	30%

The advertising rates on these cable systems are comparable to the rates used in our calculations.

In the spirit of Section 612 of the 1984 Cable Act, it is obvious that all of the cable operators I requested a lease from exhibited a clear anti competitive attitude and at worst an antitrust posture. Fortunately, Congress also recognized that posture.

It is now in your hands to carry out Congress' directive so that these types of abuses are not continued by the cable companies.

It is imperative that you adopt a rate structure that will allow television stations that do not qualify for Must Carry to gain access to the people they are licensed to serve, without preventing the station the opportunity of marketplace growth.

It is my understanding that the main purpose of Lease Channel Access is for the public to gain access to the widest possible diversity of information sources and to **promote competition** in the delivery of diverse sources of video programming. The definition of the term "commercial use" is the provision of video programming (523.5B). The term "video programming" is defined as programming **provided by,** or generally considered comparable to programming provided by, **a television broadcast station** (522.16). I believe any Federally licensed television broadcast service, including LPTV, that is not covered by the Must Carry provisions of the 1992 Cable Consumer Protection Act should get special attention under the Lease Access portion of this law. This section of the law seems to apply specifically for these types of situations. I believe this should be maintained and strengthened.

The method the Commission has proposed for determining the Maximum Reasonable Rate for Leased Channel Access lacks encouragement for competition. The method for computing the maximum rate, in practice, discourages specific types of program producers, such as LPTV stations, to lease channel capacity. It does not address program producers who do not derive their income from sources other than the cable subscriber. Further, the basis in which the rate is derived does not accurately calculate the value of the lease channel.

In Docket 92-266 the method of calculating the Maximum Rate is solely based on channel capacity and not the actual value of the channel. The intrinsic value of the channel is set by the cable subscriber by the amount the subscriber pays for that channel. Subscribers who pay $11.95 per month to receive a pay channel have set the value of that channel at $11.95. The intrinsic value of channels that sell products directly to subscribers is the monthly profit generated by that channel. For all other types of pay a percentage rate that would be attributed to a higher viewed lease channel. This would allow a more diverse usage of lease channel access.

Many LPTV stations, including W08CC, are in danger of going dark without the